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7 **UNITED STATES DISTRICT COURT**  
8 **DISTRICT OF NEVADA**  
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10 UNITED STATES OF AMERICA,

11 Plaintiff,

12 v.

13 DARRYL OWEN WALIZER,

14 Defendant.  
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Case No. 2:10-CR-00124-KJD-RJJ

**ORDER**

16 Presently before the Court is Defendant's Motion for Turn Over Order of Case Documents  
17 (#175). The Government filed a response in opposition (#178). The Government then filed a  
18 Supplemental Response (#181) to which Defendant replied (#183/185).<sup>1</sup> Also before the Court is  
19 Defendant's Motion for a More Definite Response (#186). Finally, before the Court is Defendant's  
20 Motion for an Order Compelling Attorney Raquel Lazo to Respond (#187).

21 **I. Defendant's Motion for Turn Over of Documents**

22 Defendant has sought recovery of nine documents, or categories of documents, in his motion  
23 for turn over. Most of the requests are duplicative of documents in the case docket or are  
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<sup>1</sup>Defendant also filed a Motion to Extend Time (#184) which, good cause being found, is granted *nunc pro tunc*.

1 overreaching attempts to buttress his motion under 28 U.S.C. § 2255. In order to provide a clear and  
2 concise order, the Court will address each category or document as described by Defendant.

3 *1) All reports, chronological reports, and anything entailing documents describing Agent*  
4 *Yates' participation in Walizer's case, to include investigation and surveillance.*

5 This request by Defendant is an over broad request for materials with limited relevance, if  
6 any, to his claims under § 2255. The Court denies the motion as any relevant and discoverable  
7 materials were provided in pre-trial discovery.

8 *2) A copy of the Government's Expert Report on Walizer's computer examination, to include*  
9 *browser history; Yahoo session login/history.*

10 After contacting the Government's expert, the Government was provided a CD containing  
11 300 documents and images. Some of those images may be child pornography. Additionally, the  
12 documents contain sexually explicit chat transcripts between Defendant and various persons,  
13 including undercover agents. Many of these on-line chat sessions were discussed in depth during  
14 Defendant's trial and are part of the trial transcript. Based on the pre-trial agreement between the  
15 Government and defense counsel, in which the Government agreed to make their expert available to  
16 the defense and defense counsel agreed not to call their expert witness, the Court finds that some of  
17 the 300 documents and images may be relevant. Accordingly, the Court orders the Government to  
18 provide the data for *in camera* review by the Court. The data may be provided either by CD or paper  
19 copy. Furthermore, the data shall not contain any images which are photographs or illustrations  
20 which are sexually explicit in any way. The Court will review the chat transcripts for relevance and  
21 duplication. Material which is irrelevant or duplicative of trial testimony will not be produced to  
22 Defendant.

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1           3) *Any other analysis and/or further forensics [sic] examinations ever requested of and/or*  
2 *performed by SA Kwan, in relation to Walizer's case;*

3           This request by Defendant is an over broad request for materials with limited relevance, if  
4 any, to his claims under § 2255. The Court denies the motion as any relevant and discoverable  
5 materials were provided in pre-trial discovery.

6           4-8) *Docket entries 53, 58, 61, 63, 64*

7           These entries are matters of public record and part of the official Court record and need not  
8 be produced by the Government.

9           9) *Docket entry 73: Defendant's Sealed Ex Parte Proffer Regarding Defense Theory*

10          Though this entry is part of the record, the Court orders the Clerk's Office to mail Defendant  
11 a copy since the sealed, *ex parte* entry may not have ended up in his hands previously.

12          *Conclusion:* Defendant's Motion for Turn Over is granted in part and denied in part. The  
13 Government shall provide the expert documents to chambers for *in camera* review, in accordance  
14 with this order, within thirty (30) days of the entry of this order. The Clerk of the Court shall mail a  
15 copy of docket entry 73 to Defendant. All other requests for production are denied.

16 II. Defendant's Motion for a More Definite Response or a Vaughn Index

17          Defendant's unopposed motion is granted but only to the extent that counsel Angela Dows  
18 shall have the option of either creating an index of the discovery and sending it to Defendant or  
19 merely sending the discovery to Defendant. Counsel may wish to warn Defendant if the discovery is  
20 voluminous so that he can request the appropriate permission from prison officials.<sup>2</sup>

21 III. Motion for Order Compelling Former Defense Counsel to Respond

22          Defendant seeks an order requiring his former defense counsel to respond to the Court's prior  
23 order regarding mislabeling of an expert report. However, it is clear from the response of the other  
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26          <sup>2</sup>Defendant used the term "Vaughn Index" which is a term of art used in Freedom of Information Act cases and is not applicable here.

1 counsel and the exhibits provided that there was no formal report prepared. It is unnecessary to  
2 require a response and the motion to compel a response is denied.

3 IV. Conclusion

4 Accordingly, IT IS HEREBY ORDERED that Defendant's Motion for Turn Over Order of  
5 Case Documents (#175) is **GRANTED in part and DENIED in part**;

6 IT IS FURTHER ORDERED that the Government provide the requested documents for *in*  
7 *camera* examination within thirty (30) days of the entry of this order;

8 IT IS FURTHER ORDERED that the Clerk of the Court mail Defendant a copy of Docket  
9 Entry 73: Defendant's Sealed Ex Parte Proffer Regarding Defense Theory;


10 IT IS FURTHER ORDERED that Defendant's Motion to Extend Time (#184) is **GRANTED**  
11 **nunc pro tunc**;

12 IT IS FURTHER ORDERED that Defendant's Motion for a More Definite Response (#186)  
13 is **GRANTED to the extent that Counsel Dows provide defendant with a copy of the discovery**  
14 **or an index within thirty (30) days of the entry of this order**;

15 IT IS FURTHER ORDERED that Defendant's Motion for an Order Compelling Attorney  
16 Raquel Lazo to Respond (#187) is **DENIED**

17 IT IS FURTHER ORDERED that Defendant's Motion for Leave to File Oversized Brief  
18 (#189) is **GRANTED**.

19 DATED this 11<sup>th</sup> day of May 2016.

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23 Kent J. Dawson  
24 United States District Judge  
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